



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3003708
Applicant Name: Norris Bacho for Clearwire
Address of Proposal: 1501 17th Ave

SUMMARY OF PROPOSED ACTION

Land Use Application to allow expansion of a minor communication utility (Clearwire, LLC) consisting of three antennas and four microwave dishes side mounted to an elevator penthouse on the roof of an existing apartment building (Council House).^{*} The project includes locating an accessory equipment cabinet attached to a lower level penthouse on the roof top. An existing minor communication utility will remain at development site.

The following approvals are required:

Administrative Conditional Use Review - To allow a minor communication utility to exceed the height in a Multifamily Lowrise Three zone. Section 23.57.011.B, Seattle Municipal Code

SEPA - Environmental Determination - *Chapter 25.05*, Seattle Municipal Code^{**}

SEPA DETERMINATION: ☐ EXEMPT ☒ DNS ☐ EIS

☒ DNS with conditions

☐ DNS involving non-exempt grading or demolition
involving another agency with jurisdiction

^{*} The project was originally noticed incorrectly as an existing nursing home use with five proposed microwave dish antennas.

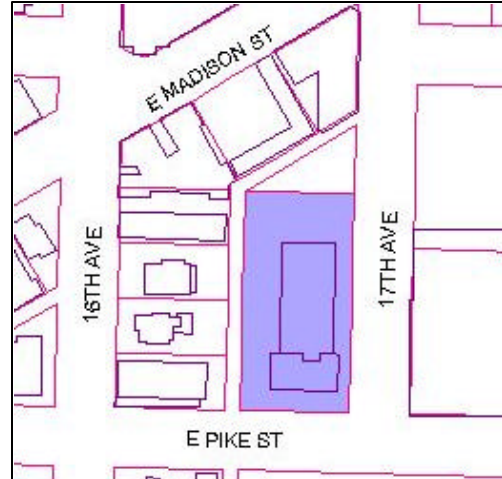
^{**} Early Notice DNS published January 30, 2006

BACKGROUND DATA

Site Location and Description

The subject site occupies a total land area of approximately 28,800 square feet at the northwest corner of 17th Avenue and East Pine Street, in the Capitol Hill neighborhood. The development

site is a truncated rectangular shaped lot that fronts on three rights-of-way; East Pine Street to the south, 17th Avenue to the east, and platted alley to the west and north in a Multifamily Lowrise Three (L3) zone, with a minimum density requirement one unit per 800 square feet of lot area. The site is also located within the Capitol Hill Urban Center Village. The site is currently developed with a low-income residential (apartment) use, owned and operated by Council House, Inc. The 12-story building was constructed in 1972, under a previous code that allowed structure height to extend up to 200 feet above grade, and is now nonconforming to current land use L-3 structure height and other development standards, if not allowed by code. And as such, any new development activity shall not increase the extent of the existing nonconformity.



The site is fully developed with an existing building occupying a significant portion of the development site, with landscaping and surface parking filling out the remaining area. An existing minor communications utility (Western Wireless) is already located on the roof top. The rectangular shaped building is one of a limited number of buildings in the area with significant presence in this part of the neighborhood. Across the alley to the west the adjacent structures are smaller in scale and design, and are more in keeping with the Capitol Hill residential vernacular. A major communication facility that features three transmission towers is located to the east across 17th Avenue. Primary pedestrian access to the apartment building is along the east façade. Vehicle access is obtained off 17th Avenue and the alley to a surface parking lot with stalls abutting the north and west property lines. The subject lot slopes down modestly from its northeast corner to southwest corner, approximately 10 feet over a distance of 330 feet. Both street frontages are fully improved with concrete sidewalks, curbs, and gutters.

Area Development

The site is located within two blocks south of the intersection of East Madison Street and 17th Avenue East. East Madison is a primary arterial connecting downtown to Madison Park. The site sits atop Capitol Hill, with views west into downtown and east to the Cascades. The neighborhood features a mixture of older and new structures, including multi-family residential uses and commercial buildings. To the south across East Pike Street is the athletic field for Seattle Public School's T.T. Minor Elementary School, an expansive open space area that provides recreational opportunities for the neighborhood community. Zoning at the subject site and immediate area is Multifamily Lowrise Three (L3), with a mix of commercial, institutional, and residential uses. To the north along the East Madison Street corridor is Neighborhood Commercial Three zone, with a sixty-five (65) foot height limit (NC3-65). Abutting this L3 zoning area to the east is Multifamily Lowrise Duplex/Triplex (LDT). Modest turn of the century multi-family and single family structures are prevalent in the area. The neighborhood is dominated by the three large transmission towers located across 17th Avenue.

Proposal Description

A Master Use Permit Application proposes to establish a new provider (Clearwire) by expanding the use of a minor communication utility that exceeds the height limit of the underlying zone, on the roof top of an existing apartment building. The project includes installation of three roof top

antennas (3-Sectors) and four microwave dishes mounted to the sides of the elevator penthouse near the center of the building, encased within a faux shroud compatible with the existing building. The accessory equipment cabinet will be located on the roof mounted to a penthouse wall.

The highest portion of the proposed minor communication utility and screening will be within the existing height envelope, 150 feet above existing average elevation grade. The height limit for the L3 zone is 30 feet above grade, and may extend higher under strict application of Code exceptions. Approval through an Administrative Conditional Use Permit is required for locating a minor communication utility in a Multifamily Lowrise zone and for constructing minor communication utilities that exceed the height limit of the zone.

Public Comment

Date of Notice of Application: January 30, 2006
Date End of Comment Period: February 13, 2006

Letters 3

Issues: One of the three letters received by DPD, during the public comment period addressed public health risks associated with the installation of antennas. The Federal Government has taken jurisdiction to evaluate public health concerns associated with these utilities, which supersedes our authority to evaluate health related impacts (for additional comments see SEPA section). Other comments included concerns about the public notice language that incorrectly identified the existing use as a nursing home that was revised once the error was discovered. Additionally, one comment letter addressed other concerns of the internal operation of Council House which did not directly relate to the proposal.

ANALYSIS AND CRITERIA - ADMINISTRATIVE CONDITIONAL USE

The establishment or expansion of a minor communication utility is regulated pursuant to Section 23.57.002. Section 23.57.011.B of the Seattle Municipal Code (SMC) provides that a minor communication utility may be permitted in a Multifamily Lowrise zone when establishing or expanding communication utility and accessory communication devices as modified by subsection 23.57.011.C with the approval of an administrative conditional use permit. Approval shall be regulated pursuant to the requirements of this section enumerated below:

- 1. The project shall not be substantially detrimental to the residential character of nearby residentially zoned areas, and the facility and the location proposed shall be the least intrusive facility at the least intrusive location consistent with effectively providing service. In considering detrimental impacts and the degree of intrusiveness, the impacts considered shall include but not be limited to visual, noise, compatibility with uses allowed in the zone, traffic, and the displacement of residential dwelling units.*

The applicant's plans depict a thoughtful integration of the telecommunication facility into the architectural design on the rooftop of the existing building. By proposing a screening technique that employs a shroud surface that is compatible to the existing architectural treatment throughout the building's exterior and roof top features, the applicant has succeeded in designing

a cohesive relationship to the existing architectural integrity of the existing building. Architecturally, the screening technique effectively harmonizes with the building's existing roof top features. The three antennas and four microwave dishes are arrayed on three sides (west, north, and east) of an existing elevator penthouse, no closer than 14 feet to the building's edges and 37 feet to the property line. The antennas are proposed to be encased within the antenna shroud will extend no higher than the height of the elevator penthouse, approximately 31 feet above roof elevation and approximately 150 feet above grade. The accessory equipment cabinet will be mounted to the side of a lower level penthouse not exceeding ten feet of the roof elevation, similarly located on from the buildings edges.

The proposed shroud assemblies will be more in keeping with the architectural character of the existing building that currently hosts antennas and dishes, some encased within shrouds from another provider. The existing shrouds were designed to mimic the look of façade of the penthouse to achieve the attended goal of architectural integration. As viewed from abutting properties, the proposed screening casings attached to the penthouse housing the panel antennas, on face appearance will look and appear to function like appendages to the penthouse. The views from neighboring residential and commercial structures would not be substantially altered by the presence of the facility. The applicant has provided photographic evidence suggesting that the visual intrusion would be minor.

The proposed minor communication utility is not likely to result in significant change to the pedestrian or residential character in the area. Neighbors and tenants of the host building will not likely be impacted by the utility, in terms of its land use, streetscape, and visual intrusion once it is constructed cell phone coverage in the area will be improved which will likely be beneficial to many residents and visitors to the neighborhood.

The host residential development site occupies the least intrusive facility in a residential area that includes Single Family 5000 (SF 5000), Lowrise Three and Lowrise Duplex Triplex (L3 & LDT) zones. The applicant has co-located the facility on an existing building in the denser Multifamily L3 zone. With the addition of the proposed antennas the applicant has demonstrated build-out of service coverage area in a less intrusive location.

Traffic will not be affected by the presence of the constructed facility. The antennas will not emit noise, and any noise associated with the equipment cabinet will be marginalized and shielded by its location. No dwelling units will be displaced in conjunction with this application. Thus, the proposal will not be substantially detrimental to the residential character of nearby residentially zoned areas.

2. *The visual impacts that are addressed in section 23.57.016 shall be mitigated to the greatest extent practicable.*

According to the plans submitted, the proposed antennas will be entirely screened from view and will be inconspicuously located, within the parameters of the SMC, while remaining functionally effective. The seven (7) shrouds mounted to the elevator penthouse on the roof top, will provide screening for three panel antennas and five microwave dishes, will be located as follows; approximately 148 feet from the north, 66 feet from the west, 70 feet from the south, and 37 feet from the east property lines. Therefore, the proposal complies with this criterion.

23.57.016 Visual Impacts and Design Standards:

- A. *Telecommunication facilities shall be integrated with the design of the building to provide an appearance as compatible as possible with the structure. Telecommunication facilities, or methods to screen or conceal facilities, shall result in a cohesive relationship with the key architectural elements of the building.*

The applicant's plans depict integration of a screening facility into the architectural design of the existing building by proposing screening techniques picking up on the surface façade treatments of the existing structure that generally match the color and pattern of the host building. The screening device will be sympathetic in materials and design to existing roof top features designed for similarly buildings. Therefore, the proposal complies with this criterion (See applicant's declarations and submitted plans).

- B. *Not Applicable.*

- C. *If mounted on a flat roof, screening shall extend to the top of communication facilities except that whip antennas may extend above the screen as long as mounting structures are screened. Said screening shall be integrated with architectural design, material, shape and color. Facilities in a separate screened enclosure shall be located near the center of the roof, if technically feasible. Facilities not in a separate screened enclosure shall be mounted flat against existing stair and elevator penthouses or mechanical equipment enclosures shall be no taller than such structures.*

The applicant's plans depict screening that extends to the top of the proposed facilities. The antennas and microwave dishes will be mounted to the side of the existing penthouse not exceeding the height of the roof top feature. The screening facility will integrate into the architectural design of the existing building via screening shapes similar to that of penthouse exterior attachments and by using screening colors and patterns that generally blend with the texture of the host building.

- D. *Not Applicable.*

- E. *Not Applicable.*

- F. *New antennas shall be consolidated with existing antennas and mechanical equipment unless the new antennas can be better obscured or integrated with the design of other parts of the building.*

The existing antenna shrouds were designed to blend in with the look of the penthouse, did achieve a level of integration anticipated, as evidenced during site visits and through photo simulations provided by the applicant. The new proposal depicts similarly designed shrouds to maintain a level of consistency to integrate the screening facility into the architectural design of the existing building by strengthening the connection between shapes, materials, and colors. The shrouds will generally match the color, pattern, and texture of the host building. The screening of proposed antennas and dishes will be sympathetic in material and design to that of the similarly designed shrouds on the host building. Therefore, the proposal complies with this criterion.

G. *Not Applicable.*

H. *Not Applicable.*

I. *Not Applicable.*

J. *Not Applicable.*

K. *Not Applicable.*

3. *Within a Major Institution Overlay District, a Major Institution may locate a minor communication utility or an accessory communication device, either of which may be larger than permitted by the underlying zone, when:*

a.) *the antenna is at least one hundred feet (100') from a MIO boundary, and*

b.) *the antenna is substantially screened from the surrounding neighborhood's view.*

The proposed site is not located within a Major Institution Overlay District. Therefore, this requirement does not apply to the subject proposal.

4. *If the minor communication utility is proposed to exceed the zone height limit, the applicant shall demonstrate that the requested height is the minimum necessary for the effective functioning of the minor communication utility.*

The applicant's RF engineer has provided evidence (Letter from David J. Pinion, (RF) Engineer, and dated December 20, 2005) that the proposed antenna height, 148 feet above grade level, is the minimum height necessary to ensure the effective functioning of the utility in the most inconspicuous manner possible. Therefore, the proposal complies with this criterion.

The proposed antennas will be located on the rooftop of the existing building. The proposed minor communication facility will extend approximately 31 feet above the roof top would be taller than the base height limit for Multifamily Lowrise Three zones. However, the additional height may be granted through an administrative conditional use permit.

Due to the operational characteristics of the proposed facility, a clear line of site from the antennas in the system throughout the intended coverage area is necessary to ensure the quality of the transmission of the wireless broadband system. The strict application of the height limit would preclude the applicant from providing wireless services for the intended coverage area, which extends north towards East Roy Street, west to 15th Avenue East, south to East Jefferson Street, and east towards 23rd Avenue East. The site was chosen because of its elevation, height of the existing building, and location which is uniquely suited to serve an expansive area. No commercial properties were identified with sufficient elevation height to provide the coverage needed to meet the service objectives in the L3 zone. Locations around 17th Avenue were also considered but structures could not be secured or located which met the desired height range between 150 feet and 250 feet above average grade elevation. Additionally, sites were deemed inadequate or inaccessible to meet optimum service level parameters within NC2-40 and NC3-65

zones. The applicant chose to co-locate on the host building that is providing minor communication service for another provider. The additional height above the underlying zone height development standard is the minimum required to obtain sufficient coverage. The additional increase in bulk, view blockage and shadow impacts are not anticipated from the extra 31 feet extension of the proposed antennas and dishes mounted to the side of the existing elevator pentho use.

According to the applicant, the literal interpretation and strict application of the Land Use Code would be that Clearwire could not meet its federal mandate of its FCC license to provide high speed wireless internet access throughout the Seattle metropolitan area. This proposal site at this elevation is a vital link in the planned network for the Seattle Metropolitan area. Given these alternatives, the height limit extension is a minimal impact. Thus, this criterion is satisfied.

5. *If the proposed minor communication utility is proposed to be a new freestanding transmission tower, the applicant shall demonstrate that it is not technically feasible for the proposed facility to be on another existing transmission tower or on an existing building in a manner that meets the applicable development standards. The location of a facility on a building on an alternative site or sites, including construction of a network that consists of a greater number of smaller less obtrusive utilities, shall be considered.*

The proposed minor communication utility is not proposed for a new freestanding transmission tower. Therefore, this provision does not apply.

SUMMARY

The proposed project is consistent with the administrative conditional use criteria of the City of Seattle Municipal Code as it applies to wireless communication utilities. The facility is minor in nature and will not be detrimental to the surrounding area while providing needed and beneficial wireless communications service to the area.

The proposed project will not require the expansion of public facilities and services for its construction, operation and maintenance. The site will be unmanned and therefore will not require waste treatments, water or management of hazardous materials. Once installation of the facility has been completed, approximately one visit per month would occur for routine maintenance. No other traffic would be associated with the project.

DECISION - ADMINISTRATIVE CONDITIONAL USE PERMIT

This application to install a minor communication utility in a Multifamily Lowrise zone, which is above the height limit of the underlying zone, is **CONDITIONALLY APPROVED**.

SEPA ANALYSIS

Environmental review resulting in a Threshold Determination is required pursuant to the State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist prepared by Peter James dated December 28, 2005. The information in the checklist, public comment, and the experience of the lead agency with review of similar projects forms the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states, in part: *"Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,"* subject to some limitations. Under such limitations/circumstances (SMC 225.05.665 D1-7) mitigation can be considered.

Short-Term Impacts

The following temporary construction-related impacts are expected: 1) decreased air quality due to increased dust and other suspended particulates from building activities; 2) increased noise and vibration from construction operations and equipment; 3) increased traffic and parking demand from construction personnel; 4) blockage of streets by construction vehicles/activities; 5) conflict with normal pedestrian movement adjacent to the site; and 6) consumption of renewable and non-renewable resources. Although not significant, the impacts are adverse and certain mitigation measures are appropriate as specified below.

City codes and/or ordinances apply to the proposal and will provide mitigation for some of the identified impacts. Specifically, these are: 1) Street Use Ordinance (watering streets to suppress dust, obstruction of the pedestrian right-of-way during construction, construction along the street right-of-way, and sidewalk repair); and 2) Building Code (construction measures in general). Compliance with these applicable codes and ordinances will be adequate to achieve sufficient mitigation and further mitigation by imposing specific conditions is not necessary for these impacts. The proposal is located within residential receptors that would be adversely impacted by construction noise. Therefore, additional discussion of noise impacts is warranted.

Construction Noise

The limitations of the Noise Ordinance (construction noise) are considered inadequate to mitigate the potential noise impacts associated with construction activities. The SEPA Policies at SMC 25.05.675 B allow the Director to limit the hours of construction to mitigate adverse noise impacts. Pursuant to this policy and because of the proximity of neighboring residential uses, the applicant will be required to limit excavation, foundation, and external construction work for this project to non-holiday weekdays between 7:30 a.m. and 6:00 p.m. It is also recognized that there are quiet non-construction activities that can be done at any time such as, but not limited to, site security, surveillance, monitoring for weather protection, checking tarps, surveying, and walking on and around the site and structure. These types of activities are not considered construction and will not be limited by the conditions imposed on this Master Use Permit.

The other short-term impacts not noted here as mitigated by codes, ordinances or conditions (e.g., increased traffic during construction, additional parking demand generated by construction personnel and equipment, increased use of energy and natural resources) are not sufficiently adverse to warrant further mitigation or discussion.

Long-term Impacts

Long-term or use-related impacts are also anticipated, as a result of approval of this proposal including: increased traffic in the area and increased demand for parking due to maintenance of the facility; and increased demand for public services and utilities. These impacts are minor in scope and do not warrant additional conditioning pursuant to SEPA policies.

Environmental Health

The Federal Communications Commission (FCC) has pre-empted state and local governments from regulating personal wireless service facilities on the basis of environmental effects of radio frequency emissions. As such, no mitigation measures are warranted pursuant to the SEPA Overview Policy (SMC 25.05.665).

The applicant has submitted a "Statement of Federal Communication Commission Compliance for Personal Wireless Service Facility" and an accompanying "Affidavit of Qualification and Certification" for this proposed facility giving the calculations of radiofrequency power density at roof and ground levels expected from this proposal and attesting to the qualifications of the Professional Engineer who made this assessment. This complies with the Seattle Municipal Code Section 25.10.300 that contains Electromagnetic Radiation standards with which the proposal must conform. The City of Seattle, in conjunction with Seattle King County Department of Public Health, has determined that Personal Communication Systems (PCS) operate at frequencies far below the Maximum Permissible Exposure standards established by the Federal Communications Commission (FCC) and therefore, does not warrant any conditioning to mitigate for adverse impacts.

Summary

In conclusion, several effects on the environment would result from the proposed development. The conditions imposed at the end of this report are intended to mitigate specific impacts identified in the foregoing analysis, to control impacts not adequately regulated by codes or ordinances, per adopted City policies.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined not to have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (c).

ADMINISTRATIVE CONDITIONAL USE CONDITIONS

Prior to Issuance of Land Use Permit:

The owner(s) and/or responsible party(s) shall:

1. Revise plans to document exterior color palette for proposed shroud screening of the antennas, cables, and related equipment to blend with the color of the building. This shall be to the satisfaction of the Land Use Planner.
2. Revise plans to detail accessory equipment cabinet screening technique flush mounted to side penthouse. This shall be to the satisfaction of the Land Use Planner.

Land Use Code Requirement (Non - Appealable) Prior to Issuance of Master Use Permit

3. The owner(s) and/or responsible party(s) shall provide access and signage in accord with Section 23.57.012C2 which restrict access to minor communications utilities to authorized personnel. This shall be to the satisfaction of the Land Use Planner.

SEPA CONDITIONS

During Construction:

The following condition to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

4. In order to further mitigate the noise impacts during construction, the hours of construction activity shall be limited to non-holiday weekdays between the hours of 7:30 a.m. and 6:00 p.m. This condition may be modified by DPD to allow work of an emergency nature or allow low noise interior work. This condition may also be modified to permit low noise exterior work after approval from the Land Use Planner.

Signature: _____ (signature on file) Date: September 4, 2006
Bradley Wilburn, Land Use Planner
Department of Planning and Development

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